



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0389]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders;

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from 15 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. If granted, the exemptions would enable these individuals with seizure disorders to operate CMVs in interstate commerce.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2011-0389 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78; Apr. 11, 2000). This information is also available at <http://Docketinfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division (202) 366-4001, or via email at fmcsamedical@dot.gov, or by letter FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The fifteen individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a commercial motor vehicle.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate commercial motor vehicles in intrastate commerce. The advisory criteria indicates that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the

decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode.

Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

SUMMARY OF APPLICATIONS

Christopher Boddie

Mr. Boddie is a 52 year-old driver in the state of Pennsylvania. He had a single seizure event in March 2011 that his physician believes was the result of uncontrolled hypertension. He was placed on anti-seizure medication and anti-hypertensive medications in March 2011 and discontinued use in August of the same year. He states

his blood pressure is under control and he continues to take his anti-hypertensive medication.

Roger Corvasce

Mr. Corvasce is a 40 year-old CMV driver from the state of New York. He was diagnosed with a brain tumor and had surgery to remove it successfully in January 2010. He was put on anti-seizure medication as a precaution after the surgery. His last seizure was December 2009. He remains on the same anti-seizure medication, with the dosage and frequency remaining the same for 2 years. His physician states he that his condition is stable. He would like to operate tractor trailer trucks in interstate commerce.

Joseph D'Angelo

Mr. D'Angelo is a 55 year-old CMV driver in the state of New York. He had a single seizure at the age of 14 in 1970. He has remained on anti-seizure medication since that time. The dosage and frequency of the anti-seizure medications have remained the same since 2002. His doctor states that his condition would not interfere with his ability to safely operate a commercial motor vehicle.

Michael Drake

Mr. Drake is a 37 year-old CMV driver in the state of Delaware. Mr. Drake had surgery in July 2009 to remove the part of his brain that was the focus of his seizures. His last seizure was July 2009. He is on the same anti-seizure medication, with the dosage and frequency remaining the same for over 10 years. His Neurologist states that there should be no restriction preventing him from having a CDL and that would likely obtain a level of safety that is equivalent or greater than other drivers.

Virgil Godbey

Mr. Godbey is a 52 year-old CMV driver in the state of Ohio. He was diagnosed with complex partial epilepsy in 2006. His last seizure was in 2006. He takes anti-seizure medication. The dosage and frequency of the anti-seizure medications have remained the same for 5 years. He has a good safety record in relation to his personal driving record and his physician states he is in excellent health.

Ricki Gutermann

Mr. Gutermann is a 45 year-old driver from the state of Wisconsin. He previously held a CDL and drove a truck for Mobil Oil. He was involved in a non-job related motor vehicle accident and sustained a traumatic head injury. He was prescribed anti-seizure medication and had two seizures in 1998 while physicians were adjusting his medication. His last seizure was July 1998. His physician states he is taking the same anti-seizure medication, with the dosage and frequency remaining the same for 13 years. The physician states that he feels it is appropriate to allow him to be recertified to drive commercial vehicles.

Glen Hogan

Mr. Hogan is a 57 year old CMV driver in the state of Wisconsin. Mr. Hogan had a single seizure event in February 2010 and has been on the same anti-seizure medication since that time, with the dosage and frequency remaining the same for 22 months. His last seizure was November 2009. He follows up regularly with his physician and his blood levels are in a therapeutic range. His physician states that he believes that in granting Mr. Hogan the exemption, he would maintain the same level of safety as other CMV drivers.

Jordan Hyster

Mr. Hyster is a 22 year-old CMV driver in the state of Ohio. Mr. Hyster was diagnosed with epilepsy in 2005 and placed on anti-seizure medication. His last seizure was in January 2009, after being told to stop his medication by previous physician. He is again on anti-seizure medication. The dosage and frequency of the anti-seizure medication has remained the same for 23 months. His physician states that he believes that Mr. Hyster will likely achieve a level of safety expected of drivers as long as he remains on medication.

David R. Kietzman

Mr. Keitzman is a 49 year-old CMV driver in the state of Wisconsin. In December 2007 he underwent surgery to remove a right parietal vascular malformation. His physician states that this brain abnormality was the cause of his seizures. He has been on the same anti-seizure medications with the dosage and frequency remaining the same since October 2008. His last seizure was October 2008. His physician states that he is neurologically normal. His current employer states that he has been an intrastate tractor semi-trailer driver for them since 1991 and has proven to be a safe, competent, and conscientious driver.

Joseph Kogut

Mr. Kogut is a 53 year-old CMV driver in the state of North Carolina. He was involved in a motor vehicle accident in 1982 and sustained a head injury. Following the accident, he had a single seizure. He has taken the same anti-seizure medication for more than 29 years with no change in dosage or frequency of use. His physician states that he feels that Mr. Kogut should be allowed to drive CMVs.

Philip McLain

Mr. McLain is 47 year old CMV driver in the state of Maine. He had a nighttime seizure-like episode in August 2010. He was diagnosed subsequently with AVM (Arteriovenous Malformation), a brain congenital condition. He underwent surgery to remove the defect and has had no further seizures or seizure-like episodes. His last seizure was in August 2010. He was given anti-seizure medication following the operation and has been off the medication since October 2010. He remains asymptomatic and his physician states she is in favor of allowing him to drive without restrictions.

Mr. Andy McNeal

Mr. McNeal is a 49 year-old driver in the state of Indiana. In 2007, he had a single seizure event and was diagnosed with a brain tumor. He had the tumor removed successfully and his last seizure was May 2007. He is taking anti-seizure medication, with the dosage and frequency for over 4 years. He has had an electro-encephalogram (EEG) in 2009 that showed no epileptiform activity and an Magnets Imaging Resonance (MRI) in 2010 showed no evidence of tumor recurrence. His physician states that although there is no way to guarantee his never having another seizure, neurological examination currently shows no deficits which would impair his safe operation of a motor vehicle.

Lonnie Reiker

Mr. Reiker is a 52 year-old driver who drives in the state of Illinois. Mr. Reiker was diagnosed with a brain tumor in December 2009 following a single seizure event in November 2009. He had surgery in March 2010 to remove the tumor and has been given anti-seizure medication following the surgery. The dosage and frequency of the

anti-seizure medication has remained the same for more than 2 years. His last seizure was December 2009. Three subsequent MRIs indicate no tumor re-growth. His physician states that, in his opinion, at this time Mr. Reiker's driving safety is equivalent to other CMV drivers.

Mark A. Smith

Mr. Smith is a 51 year-old CMV driver in the state of California. He had a single episode of loss of consciousness in August 2010. He is taking the same anti-seizure medication with the dosage and frequency remaining the same for 16 months. His last seizure was August 2010. He is under the regular care of a neurologist, who states he is stable and doing very well. He states further that Mr. Smith is likely to achieve a level of safety that is equivalent or greater than the level of any other person to drive. He would be driving a semi truck and seeks to work five days on and then two days off.

Cheryl Woskie

Ms. Woskie is a 41-year old Class B bus driver in the state of Massachusetts. She was diagnosed with a Cavernoma, a brain malformation, in October 2010, causing her to have three seizures within one month. Surgery was performed to remove the congenital defect and she was placed on anti-seizure medication, which was discontinued in November 2011. She would like to begin driving a bus again.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: December 22, 2011

Larry W. Minor
Associate Administrator for Policy

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